



June 7, 1999

Mr. Raymond D. Martinez
Office of the City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-1583

Dear Mr. Martinez:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 124672.

The City of Dallas Police Department (the "department") received a request for several categories of information concerning a specified investigation "into the death of Shane Glenn Sorrells." The requestor states that "as counsel for the Sorrells family" she requests copies of the department investigation into the death, as well as "[a]ny and all" reports concerning Shane Sorrells and "[a]ll calls to 3910 North Hall Street from September 1, 1997 - September 30, 1998." In response to the request, you submit to this office for review the records at issue. You assert that the requested records are excepted from required public disclosure by sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted documents include what appear to be autopsy reports which are considered to be public by statute. The Public Information Act's exceptions do not, as a general rule, apply to information made public by other statutes. Open Records Decision No. 525 (1989). Section 11, article 49.25 of the Code of Criminal Procedure provides as follows:

¹In your brief to this office, you assert that the requested records "constitute child abuse records/juevenile [sic] investigation." We assume that you are claiming that the requested records contain information which may be confidential and excepted from disclosure under section 552.101, in conjunction with sections 58.007 and 261.201 of the Family Code. Based on a review of the submitted records, it does not appear that either statute is applicable to the submitted records.

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. Such records shall be public records.

Code Crim. Proc. art. 49.25, § 11. Pursuant to section 11, to the extent the requested information includes autopsy records, such information is a public record and must be released to the requestor. *See also* Open Records Decision No. 529 at 8 (1989).

We also note that article 49.18(b) of the Code of Criminal Procedure requires that law enforcement agencies complete custodial death reports and file those reports with the attorney general, who “shall make the report, with the exception of any portion of the report that the attorney general determines is privileged, available to any interested party.” In Open Records Decision No. 521 (1989), this office held that under article 49.18(b), in conjunction with a directive issued by the Office of the Attorney General, section one of custodial death reports filed with this office is public information. All remaining portions of the custodial death report, *i.e.* Parts II through V, including all attachments, are deemed privileged under article 49.18(b) and must be withheld from the public. Open Records Decision No. 521 at 5 (1989). Accordingly, the department must withhold all portions of Parts II through V of all the custodial death report. However, Part I of the custodial death report is expressly made public under article 49.18(b), and therefore this portion of the custodial death report must be released.

Section 552.108, the “law enforcement exception,” provides in relevant part as follows:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:
 - (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
 - (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

....

- (c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

The exception from disclosure under section 552.108 is discretionary and may be waived by the governmental body. Open Records Decision No. 177 (1977). *See also* Open Records Decision No. 586 (1991). In this instance, you state the "information requested is an active investigation," however, you have failed to explain how this exception applies to the information at issue. Chapter 552 of the Government Code places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Based on the department's failure to offer any support for the section 552.108 exception, we find that the department has not sustained its section 552.108 claim, and may not withhold any of the requested information under this exception.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The

scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

The submitted records concern an investigation into the *death* of a specified individual while in department custody. Our office has previously ruled that, generally, the right of privacy is personal to an individual and lapses upon death. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981); *see also* Open Records Decision No. 422 (1984) (presumption that details of self-inflicted wound, beyond mere fact that it was self-inflicted, are excepted by common-law privacy may be overcome by demonstration that public has substantial interest in particular incident). Therefore, since most of the submitted records concern a deceased individual, the department may not withhold such records under common-law privacy.

However, after reviewing the records, we agree a small portion of the submitted records implicate certain individuals’ privacy interests. Financial information relating to an individual, including sources of income, salary, and debts, generally satisfies the first prong of the test for common-law privacy. Open Records Decision No. 373 at 3 (1983). Some of the information at issue concerns the private financial status and decisions of individuals. Furthermore, this office has concluded that there is no legitimate public interest in private financial decisions. Open Records Decision No. 600 (1992). We have marked/tagged the type of records which must be withheld from required disclosure pursuant to section 552.101 in conjunction with common law privacy.

Although you have not raised any other applicable exceptions, based on the records at issue, we must consider whether some of the submitted information should be excepted from required public disclosure under section 552.130 and section 552.101 in conjunction with an applicable statute.² Section 552.101 encompasses information protected by statutes.

We note that Texas law prohibits the public disclosure of psychological records. Chapter 611 of the Health and Safety Code provides for the confidentiality of mental health records created or maintained by a mental health professional. Communications between a patient and a mental health professional and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a mental health professional are confidential. Health & Safety Code § 611.002(a). Based on the records at issue, we are unable to determine whether this provision is applicable to the submitted records. *See* Gov’t Code § 552.352 (criminal penalties for release of confidential information).

²The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. *See generally* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

If the information submitted for our review contains criminal history record information (“CHRI”) that is generated by the Texas Crime Information Center (“TCIC”) or the National Crime Information Center (“NCIC”) it must not be publicly released. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose, Gov’t Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. Therefore, any CHRI that falls within the ambit of these state and federal regulations must be withheld from the requestor.

We further note that the submitted information contains social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, we note that section 552.130 to the Public Information Act governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:
 - (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state;
or

(3) a personal identification document issued by an agency of this state
or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner,
authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. Section 552.130 provides that information is excepted from disclosure if it relates to a motor vehicle driver's license, title or registration issued by a state agency. This type of information may be released only as provided under chapter 730 of the Transportation Code. We have marked the type of information which must be withheld pursuant to section 552.130. All of the requested information not specifically addressed above must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive, flowing style. The first letter "S" is large and loops around the first part of the name. The name "Sam Haddad" is written in a clear, legible cursive script.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 124672

Encl.: Marked documents

cc: Ms. Rebecca Hamilton
118 West Rusk Street
Rockwall, Texas 75077
(w/o enclosures)